IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 361/2002
(Laxmi Narayan & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 13/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. I.R.Choudhary}
Mr. V.S.Choudhary} for the petitioners.
Mr. Ashok Upadhyaya, P.P.
Mr. R.K.Singhal for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. Petition under Section 482 Cr.P.C., the petitioners seek quashing of FIR No. 09/2002 Police Station, Nava Shahar, district Nagaur.

I have heard learned counsel for the petitioners, public prosecutor and the counsel appearing for the non-petitioner complainant. Perused the material placed on record.

It is contended by learned counsel for the petitioners that the said FIR was investigated by the police and after investigation, the police filed a negative final report before the

Court of Judicial Magistrate, Nava. The negative final report has not yet been accepted by the court below. However, they apprehend that the investigating agency would take the matter back and make further investigation and therefore seeks quashing of FIR. Learned counsel for the petitioner has relied on the decisions of Hon'ble Supreme Court in Hemant Dhasmana Vs. Central Bureau of Investigation and another, 2001 AIR SCW 3064, in Hasanbhai Valibhai Qureshi Vs. State of Gujarat and others, 2004 AIR SCW 2063 and in T.T.Antony Vs. State of Kerala 2001 Cri.L.J. 3329 (SC).

Learned public prosecutor and the counsel appearing for the non-petitioner No.2 have relied on a decision of Hon'ble Supreme Court in State of Orissa Vs. Mahima @ Mahimananda Mishra and Ors., 2003 (1) W.L.C. (SC) Criminal, 211.

In T.T.Antony Vs. State of Kerala in para 19 of the report, Hon'ble Supreme Court held that the scheme of the Cr.P.C. is that an officer-in-charge of a Police Station has to commence investigation as provided in Sections 156 and 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Sections 169 or 170 of

Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173 (2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

In Hemant Dhasmana Vs. Central Bureau of Investigation and another (supra), the Apex Court held as under :-

> "Although the said sub-section does not, in specific terms, mention about the powers of the Court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a Court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations

> were made, and if the allegations are found false again the complainant would be in trouble. So, from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the Investigating Officer would not be able to collect any further material at all. That is an area which should have been left to the Investigating Officer to survey and recheck."

In Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others (supra) the Apex Court held that the hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth. Sub-section (8) of S. 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. All the more, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted, it would ordinarily be desirable that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an

expeditious disposal of the matter by the Courts. In view of the aforesaid position of law **if there is necessity for further investigation the same can certainly be done as prescribed by law**. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. (emphasis supplied)

The Apex Court in State of Orissa Vs. Mahima @ Mahimananda Mishra and Ors. (Supra) relying on a decision of Hon'ble Supreme Court in Hemant Dasmana Vs. Central Bureau of Investigation and Another (supra) held that the power of further investigation has widest sanctity and cannot be held to be restrictive.

In view of the law laid down by Hon'ble Supreme Court and the backdrop of the facts of the present case when examined, it is evident that the first information report has already been investigated and police has filed a negative final report which has not yet been accepted by the trial Magistrate. Learned counsel for the petitioners submits that on report of the complainant to the Superintendent of Police, the matter will be further investigated without there being any formal permission of the trial court. The case is mainly founded on apprehension.

There is nothing on record to show that the papers filed in the Court by the investigating agency as a final report have ever been sought back. It is always open to the police to make a further investigation under sub-section (8) of Section 173 Cr.P.C., however, since the final report has been filed in the Court, it would be appropriate, keeping in view the decision of Hon'ble Supreme Court referred herein above, to take a formal permission of the trial court and further investigate the matter.

With the above observations, the petition is disposed of. Stay petition also stands dismissed.

(H.R.PANWAR),J.

rp